

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

SOUTHERN DESIGN AND MECHANICAL, INC.

PLAINTIFF

V.

Civil No. 1:16-cv-01003

FLOWSERVE US, INC.

DEFENDANT

ORDER

Before the Court is Defendant's Motion to Dismiss and Compel Arbitration. ECF No. 7. Plaintiff has filed a response to the motion. ECF No. 12. Defendant has filed a reply. ECF No. 14. The Court finds the matter ripe for its consideration.

A distribution agreement between the parties states that "any disputes" arising between the parties, if not otherwise resolved within forty-five (45) days after notice to the party, will be submitted to arbitration. ECF No. 8-1, ¶ 16(f). Defendant moves the Court to dismiss this action without prejudice and to compel Plaintiff to submit all claims alleged in its complaint to arbitration. Plaintiff admits that, because its claims are governed by the distribution agreement, the claims must be arbitrated. Plaintiff, however, urges the Court to stay the action pending arbitration rather than dismiss it without prejudice.

"The [Federal Arbitration Act, 9 U.S.C. § 3,] generally requires a federal district court to stay an action pending an arbitration, rather than to dismiss it." *Green v. Supershuttle Int'l*, 653 F.3d 766, 769 (8th Cir. 2011); 9 U.S.C. § 3 (stating district courts "*shall* . . . stay the trial action until arbitration has been had in accordance with the terms of the agreement") (emphasis added). In other

words, the Federal Arbitration Act authorizes a court to stay a proceeding when the dispute is referable to arbitration but does not require dismissal of the case. Although there is some authority for a judicially created exception to this seemingly mandatory language regarding a stay, the Court declines to apply the exception to the present case. *See Green* 653 F.3d at 769-70 (District courts “may, in their discretion, dismiss an action rather than stay it where it is clear the entire controversy between the parties will be resolved by arbitration.”); *Unison Co., Ltd. v. Juhl Energy Development, Inc.*, 789 F.3d 816, 821 (8th Cir. 2015) (recognizing that district courts may decide whether it is appropriate to dismiss the case or stay it pending the outcome of the arbitration proceedings).

Accordingly, the Court finds that Defendant’s Motion to Dismiss and Compel Arbitration (ECF No. 7) should be and hereby is **GRANTED IN PART** and **DENIED IN PART**. The parties are directed to proceed with arbitration in accordance with the terms of the agreement. The above-styled and numbered case is **STAYED** pending the outcome of the arbitration proceedings. The Clerk is directed to administratively terminate the case without prejudice to the right of either party to reopen the proceedings for good cause shown, for entry of any stipulation or order, or for any other purpose required to obtain a final determination in the litigation.

IT IS SO ORDERED, this 7th day of April, 2016.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge